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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON DIVISION**

OHIO CASUALTY INSURANCE COMPANY and
LIBERTY INSURANCE UNDERWRITERS INC.,

Plaintiffs,

-against-

WAL-MART STORES INC. AND WAL-MART
TRANSPORTATION LLC, QBE INSURANCE
CORPORATION, ST. PAUL FIRE AND MARINE
INSURANCE COMPANY and XL INSURANCE
AMERICA, INC.,

Defendants.

Civil Action No. 3:15-cv-07414-AET-
DGA

CIVIL ACTION

NOTICE OF JOINDER BY
DEFENDANT QBE INSURANCE
CORPORATION IN PLAINTIFFS'
MOTION TO REMAND

Defendant, QBE INSURANCE CORPORATION (“QBE”), by its attorneys, Rivkin Radler LLP, hereby joins in Plaintiffs’, Ohio Casualty Insurance Company’s and Liberty Insurance Underwriters, Inc.’s (“Plaintiffs”), Motion to Remand. (Dkt. 9). QBE joins in the relief sought by Plaintiffs’ motion and agrees that this action should be remanded to New Jersey state court.

Remand is necessary because the removing parties, Defendants, Wal-Mart Stores, Inc. and Wal-Mart Transportation, LLC (collectively “Wal-Mart”), did not seek or obtain the

consent of QBE prior to removal, as required under 28 U.S.C. § 1446(b)(2)(A). To the contrary, QBE objects to the removal of this action.

Although Wal-Mart contends that QBE was “fraudulently joined,” Wal-Mart cannot meet the heavy burden of proving a fraudulent joinder. Plaintiffs properly joined QBE in this action as an entity with an interest in the outcome of the insurance coverage issues raised by Plaintiffs pursuant to New Jersey’s Declaratory Judgment Act. N.J.S.A. 2A: 16-53. The Declaratory Judgment Act specifically mandates that “[w]hen declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding.” N.J.S.A. 2A: 16-56 (emphasis added).

QBE has a very real and substantive interest in this declaratory judgment litigation. Indeed, prior to removal, QBE answered Plaintiffs’ Complaint and asserted substantive and affirmative cross-claims against Wal-Mart under the QBE policy issued to Wal-Mart, including that Wal-Mart’s underlying settlements were unreasonable and excessive, and not covered, among other claims. (Dkt. 1, Exh. 3). Wal-Mart cannot credibly dispute that QBE is an interested party because Wal-Mart specifically named QBE in Wal-Mart’s own action commenced in the Circuit Court of Benton County, Arkansas, entitled *Wal-Mart Stores, Inc. et. al., v. Liberty Insurance Underwriters, Inc., et. al.*, No. CV15-1453-5, in which Wal-Mart seeks a declaration as to the same underlying settlements at issue in Plaintiffs’ Complaint here.¹ Accordingly, for this and the reasons in Plaintiffs’ Motion to Remand, Wal-Mart’s “fraudulent joinder” argument must be rejected.

Finally, as demonstrated in Plaintiffs’ motion, once the Court conducts the necessary

¹ As pled in QBE’s cross-claims, the Arkansas action was prematurely and improperly filed because Wal-Mart violated its agreement with QBE to not commence any litigation adverse to QBE prior to the expiration of five business days’ notice. No such notice was ever provided to QBE.

realignment of the parties (pursuant to the “principal purpose” or “primary issue” test adopted by the Third Circuit), the Court would be deprived of subject matter jurisdiction because Wal-Mart and defendant XL Insurance America, Inc. are both Delaware citizens.

Based upon the foregoing, and for the reasons discussed in Plaintiffs’ Motion to Remand, QBE joins in the relief sought in that motion and respectfully requests that this action be remanded to the Superior Court of New Jersey, Law Division, Middlesex County, where it was originally filed, and that costs and fees be awarded as against Wal-Mart.

RIVKIN RADLER LLP

Dated: October 23, 2015

BY: /s/ Brian R. Ade
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